

## 48A C.J.S. Judges § 194

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VII. Compensation and Fees

#### A. General Considerations

## § 194. Recovery of compensation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(1), 22(2)

**A judge has the right to sue to recover his or her compensation; and a governmental body may recover back from a judge compensation paid the judge which was not authorized by law.**

A judge may bring an action to recover any unpaid compensation to which the judge may be entitled.<sup>1</sup> The fact that if a county were compelled to pay it would exceed its budget and appropriations is no defense to an action to recover balance of salary due.<sup>2</sup>

In an action to recover compensation, the judge has the burden of proving his or her case<sup>3</sup> by competent proof<sup>4</sup> and by a preponderance of the evidence.<sup>5</sup> In such an action, questions of fact are for the jury.<sup>6</sup>

### *Recovery by governmental body.*

As a general rule, any compensation paid to a judge which is not authorized by law or is in excess of the compensation authorized by law may be recovered by the proper governmental body.<sup>7</sup> However, compensation which is legally paid to a judge is not recoverable.<sup>8</sup> A petition by a governmental body seeking the recovery of compensation unlawfully paid must state a cause of action.<sup>9</sup>

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### Footnotes

- 1 Ky.—*City of Winchester v. Payne*, 502 S.W.2d 531 (Ky. 1973).
- N.Y.—*Pfingst v. Levitt*, 44 A.D.2d 157, 354 N.Y.S.2d 26 (3d Dep't 1974).
- 2 N.J.—*Crater v. Somerset County*, 17 N.J. Misc. 133, 4 A.2d 19 (Sup. Ct. 1939), judgment rev'd on other grounds, 123 N.J.L. 415, 8 A.2d 696 (N.J. Ct. Err. & App. 1939) and order rev'd on other grounds, 123 N.J.L. 407, 8 A.2d 691 (N.J. Ct. Err. & App. 1939) and judgment rev'd on other grounds, 123 N.J.L. 414, 8 A.2d 697 (N.J. Ct. Err. & App. 1939).
- 3 U.S.—*Atkins v. U. S.*, 214 Ct. Cl. 186, 556 F.2d 1028 (1977) (disapproved of on other grounds by, *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, 673 F.2d 425 (D.C. Cir. 1982)).
- 4 Mich.—*Moll v. Wayne County*, 332 Mich. 274, 50 N.W.2d 881 (1952) (overruled in part on other grounds by, *Brown v. State, Dept. of Military Affairs*, 386 Mich. 194, 191 N.W.2d 347 (1971)).
- N.J.—*Erwin v. Hudson County*, 136 N.J.L. 560, 57 A.2d 212 (N.J. Ct. Err. & App. 1948).
- 5 Mich.—*Moll v. Wayne County*, 332 Mich. 274, 50 N.W.2d 881 (1952) (overruled in part on other grounds by, *Brown v. State, Dept. of Military Affairs*, 386 Mich. 194, 191 N.W.2d 347 (1971)).
- 6 N.J.—*Erwin v. Hudson County*, 136 N.J.L. 560, 57 A.2d 212 (N.J. Ct. Err. & App. 1948).
- 7 Ariz.—*Maricopa County v. Rodgers*, 52 Ariz. 19, 78 P.2d 989 (1938).
- Okla.—*Wiles v. Board of Com'rs of Alfalfa County*, 1936 OK 792, 178 Okla. 341, 62 P.2d 1182 (1936).
- 8 Ohio—*Board of County Com'rs of Allen County v. Andrews*, 50 Ohio App. 2d 375, 4 Ohio Op. 3d 324, 363 N.E.2d 746 (3d Dist. Allen County 1976).
- 9 Tex.—*Travis County v. Matthews*, 235 S.W.2d 691 (Tex. Civ. App. Austin 1950), writ refused n.r.e.

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